

HEARING INSTRUCTIONS FOR UNEMPLOYMENT INSURANCE APPEALS

K-OA-P 01 (Rev. 7-14)

Please read and follow these instructions carefully before participating in your unemployment insurance appeals hearing.

This information is not intended as a substitute for the law found at [K.S.A. 44-701](#) et. seq. and its amendments, supplemental case law and K.A.R. [Articles 48](#) and [50](#).

Before the Hearing

Notice of Hearing: After you have requested an appeal, you will receive a *Notice of Hearing* in the mail. This notice will state the date, time and type of your unemployment insurance appeals hearing. Most hearings will be scheduled to take place by telephone.

If your hearing is by phone, you must call the Office of Appeals as soon as possible after receiving the notice to provide the phone number(s) where you and each of your witnesses can be called at the time of the hearing. This information must be provided no later than 1:00 p.m. the business day before the date of your hearing. If you do not provide the number as directed, you will not be called and none of your information will be considered in the hearing.

If the appealing party does not appear by failing to provide a phone number, failing to answer the phone when called or failing to appear when and where scheduled for an in-person hearing, none of your information will be considered and the hearing will be dismissed. The original decision that is being appealed will remain in effect. If the non-appealing party fails to appear, the hearing will be conducted without the non-appealing party and none of his or her information will be considered by the referee in making a decision.

Telephone Hearings: You should be prepared to take the call when scheduled. Make sure you can receive the call in a setting with minimal background noise and no interruptions that will interfere with the call.

If using a speakerphone, make arrangements so that each witness will be as close to the phone as possible to ensure they are heard clearly when speaking. If you have witnesses, to the extent possible, have them at the same location and use the same phone instead of multiple phones at multiple locations. Avoid using cellular or mobile phones due to connection and quality problems. If you must use a cellular or mobile phone, make sure you have good reception, the phone is fully charged and you are not driving or riding in a vehicle while participating in a hearing. If your call is “dropped”, you may not be called back.

If using a public phone, be sure it will accept incoming calls. If you do not have access to a phone, contact the Office of Appeals immediately and arrangements may be made to use one at your local Workforce Center.

In-Person Hearings: Sometimes circumstances exist that make conducting a hearing by telephone difficult or undesirable. This includes large numbers of witnesses, large volumes of documents, complex cases or something that prevents a person from using a phone. If you believe you have good reason to appear in person, you should contact the Office of Appeals immediately to discuss the matter. The assigned referee will then decide if the case should be set or reset for an in-person hearing. If the hearing is in person, it will be held in Topeka, Kansas.

Continuance: There may be times when, for good reason, you cannot appear for your hearing at the scheduled date or time. “Good reasons” might include pre-scheduled doctor’s appointments, family or medical emergencies, prior conflicting court hearings, etc. In those cases, you may need to ask that your hearing be continued and reset for another time and date. Continuances will not be granted based on mere inconvenience of a party.

If a continuance is necessary, you should contact the Office of Appeals immediately and make the request. Any request made after 1:00 p.m. on the business day before the scheduled hearing will be granted only in cases of demonstrated emergencies. It will be up to the referee to grant or deny any continuance request. **If an Office of Appeals representative has not specifically told you that your request has been granted, you should plan to appear as originally scheduled.**

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Witnesses: You may have other parties as witnesses in your hearing if you believe they are necessary to the best presentation of your case. It is your responsibility to arrange for your own witnesses and provide their phone numbers to the Office of Appeals. Whenever possible, it is better to have first hand information from those who actually saw or heard the events. There is no need to have numerous witnesses to prove the same point. Have all of your witnesses ready to go and available at the time of the scheduled hearing. You will not be given another opportunity to present additional witnesses or evidence after the hearing.

Hearsay: "Hearsay" is any observation, statements, documents or information presented as evidence in a hearing, but not by the person who made the observation, made the statement, wrote the document or provided the information. An example of this would be the personnel director testifying under oath as to what a supervisor wrote in a written warning and why the supervisor issued the warning to the offending employee. In this example, unless the personnel director was the person who made the observations directly regarding what the employee did or said, then his or her testimony on the matter would be "hearsay".

Hearsay is admissible in an administrative hearing such as an unemployment insurance appeals hearing but may not always be the "best" evidence because of reliability and credibility issues and is not admissible without limitations. This is especially true when the opposing party is present to testify under oath, is subjected to questioning, and disputes the hearsay information. Hearsay evidence is best used to supplement other first-hand knowledge but not to totally replace it unless there is no other option. No finding of fact or decision can be based totally on unsubstantiated, hearsay testimony.

Documents: Documents such as policies, warnings issued, reports, medical information, etc. might be helpful or necessary in presenting your case. If you intend to use any documentation that was not part of your original claim, response, or part of the appeal packet, you are responsible for providing copies to both the referee and the opposing party prior to the hearing. Documentation must be submitted far enough in advance so they are received by the other parties no later than 1:00 p.m. on the business day prior to the scheduled hearing. Identify the documents by names of the parties, docket number of the case, Social Security number of the claimant and/or date and time of the hearing. Failing to provide documents according to these instructions might result in those documents and information being denied from consideration as evidence.

Subpoena: There may be times when you believe a document in the possession of someone else or a witness is important to your case. You ask the witness to appear at your hearing or the party to provide documentation and they refuse. In that situation, you may need a subpoena to be issued in order to compel the witness to appear or the document to be produced.

If this is the case, you should make a written request to the Office of Appeals immediately for a subpoena. The written request must contain:

- Your identifying information
- First name, last name, and address of the party to whom the subpoena is to be issued
- What information you expect the witness or document will provide.
- Why this information is important to your case.
- Your statement to the effect that you did ask for the person's voluntary cooperation and he or she refused.

The referee will decide whether or not to grant your request. If your original request is denied, you may make an oral request for the subpoena again at the hearing and the referee can decide if the request should be reconsidered. If a subpoena request is granted, it may require that your hearing be rescheduled for a later date.

Legal Representation: You may have an attorney represent you at any stage of the process at your own expense. Give copies of all the material sent to you by the Office of Appeals to your attorney for his or her review. All attorneys must comply with K.S.A. 44-718 (b) and K.A.R. 48-3-2 (e) in regard to fees charged. Attorneys not licensed to practice in Kansas must comply with Kansas Supreme Court Rule 116. Your attorneys should file an "Entry of Appearance" with the Office of Appeals upon being hired. All attorneys are expected to be familiar with the provisions of K.S.A. 44-701 et. seq. and its amendments, supplemental case law, K.A.R. Articles 48 and 50 and the Office of Appeals practice and procedure requirements. If you are going to hire an attorney, do so right away so he or she can start helping you and be ready when the hearing occurs.

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Duly Authorized Representative: K.A.R. 48-3-2(c) (1)(a-d) allows for representation by non-attorneys. They include union representatives, supervised law students, employees of a corporate employer and employees of an employer's third party cost control firm. No other non-attorney may appear and represent a party in the hearing. Such representatives are expected to be familiar with relevant Kansas laws and regulations as well as the Office of Appeals practice and procedure requirements. They must ensure their clients comply with the same. They are also expected to provide all relevant documents to their client to allow for appropriate participation in the hearing.

Communications or Language Barriers: If you have special needs that must be accommodated, such as speech or hearing impairments or lack of fluency in English, you should contact the Office of Appeals to make your needs known so that accommodations can be made. The Office of Appeals will provide certified interpreters when needed. You will not be allowed to provide your own interpreter.

Withdrawal: If you change your mind after filing a request for an appeal hearing and do not want to go forward with the process, you should send a written notice to the Office of Appeals stating that you intend to withdraw. You may also request the withdrawal of your appeal while under oath at the hearing. This request should be made as soon as you decide not to go forward with the appeal so as not to prolong the process unnecessarily. Only the appealing party may make this type of request.

Prepare: Once you make the decision to appeal your initial determination or receive notice that an appeal has been filed by the other party, begin preparing for the appeal hearing. Read the *Notice of Hearing* and be sure you know what issues are being covered in the hearing and prepare to address each. Think about what information you would like the referee to consider from your point of view. Think about what witnesses or documents might best help present your case. Take the necessary steps noted above to gather witnesses and submit documents. Do not assume you will have another opportunity to submit more evidence at another hearing at a later date because you likely will not. Read all of the instructions you are given. If there is something you do not understand, call the Office of Appeals for more information or assistance.

Continuing Claims: While you are waiting for your appeal hearing, if you are still unemployed, you should continue to file your weekly claims for benefits. If you do not and your claim is approved, you might not receive any benefits for those weeks.

The Hearing

Time: Most hearings are initially set for 45 to 60 minutes. You should set aside at least that much time to participate. Some cases may take longer and will require special settings. Circumstances such as large number of witnesses, large volume of documents, complex issues, appearance of attorneys, etc. could require more time. If you have one of these conditions, you should contact the Office of Appeals immediately to discuss the situation with them. Because hearings are usually 45 to 60 minutes apart and your referee is likely conducting several hearings a day, there will be occasions when a hearing before yours may overrun and cause a delay in the referee starting yours on time. In those cases, just be patient if you are not called exactly on time. The referee or someone from the Office of Appeals will call you shortly. If you have not been contacted within 15 minutes of your hearing start time, you may call the Office of Appeals and inquire.

The Referee: A referee will be assigned to hear your appeal. The referee is an employee of the Kansas Department of Labor and may be referred to as a judge or hearing officer. Failure to follow instructions given by the referee could result in your dismissal from the hearing. If you are dismissed from a hearing, the referee will rule on the evidence available.

Hearing Procedure: Provided you have forwarded your telephone number as instructed above, the referee will call you at the scheduled time or, in the case of an in-person hearing, will announce your case at the appropriate time. The referee will collect names and job titles of all parties appearing. The entire hearing process will be recorded in order to preserve the record for possible later appeals. You are prohibited by law from recording or making a complete record of the hearing yourself. The referee will give you a brief explanation of the hearing process. Formal rules of evidence will be followed but not strictly applied. All testifying parties will be placed under oath and be subject to the Kansas perjury laws.

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The referee will direct the order of the witnesses and testimony to be given. Each side will also have the right to ask questions of their own witnesses as well as question the other party and its witnesses. One side will present all of their evidence first and have each of their witnesses questioned by the other party, then the other side will present their evidence and allow their witnesses to be questioned with assistance from the referee. When both sides have completed presenting their initial information in this manner, each will be allowed to present additional or rebuttal evidence. Once both sides have presented all their evidence, each side may make a “closing statement” that summarizes why they believe the referee should rule in their favor.

Decision: No decision will be issued during the hearing. You will receive a written decision from the referee by mail. The decision will state the referee’s findings, applicable law and the rationale for issuing the decision reached. If you disagree with that decision, you have a right to file an additional appeal. The method to appeal will be explained in the decision.

After The Hearing

Continuing Claims: While waiting for your decision from the referee, continue to file your weekly claims if you are still unemployed.

Additional Appeal Rights: If you disagree with the referee’s decision, you have an additional appeal available to you. That appeal is to the Kansas Employment Security Board of Review. The Board will review the decision and the record created. It has the authority to affirm the referee’s decision (agree), reverse the referee’s decision (disagree) or remand the decision (send the case back to a referee with specific instructions). In the latter instance, the referee will either re-open the hearing to carry out the specific instructions or conduct a new hearing if warranted. The Board’s decision can be appealed to the District Court.

QUESTIONS OR OTHER INFORMATION

If you need to contact the Office of Appeals, use one of the following methods:

Phone: Topeka area(785) 296-1800
Toll free outside Topeka area(800) 227-0067

Fax: (785) 296-4065

Mail: 401 SW Topeka Blvd., Topeka, KS 66603-3182

Online: **www.GetKansasBenefits.gov**
Go to *Frequently Asked Questions* –
[Appeals Process](#) and [Denial of Benefits](#)